

BACKGROUND DETAILS RE:

- Delta dissolved oxygen (DO) objectives disapproval
 - Submitted to EPA _____; disapproved May 2000
 - In July 2003, OST identified resolution of this disapproval as the highest WQS backlog priority for Region 9; WQS Branch management indicated that HQ might be able to provide funding to support the necessary studies.
 - Reason for disapproval: Rearrangement of dissolved oxygen objectives text removed saturation-based monthly median DO objectives from the Delta. This left most of the Delta with only minimum concentration objectives, and certain poorly defined Delta waters ("special purpose" constructed waters with "unimportant" fisheries) with no DO objectives at all. State did not demonstrate that existing uses and water quality will be protected, as required under federal and State antidegradation policies.
 - Complicating factors:
 - EPA recommends against the use of saturation-based DO criteria; however the Delta's remaining concentration-based criteria are not, alone, fully consistent with EPA criteria guidance;
 - Regional Board does not know whether or to what extent Delta waters ever attained the saturation-based objectives;
 - Regional Board is reluctant to introduce new objectives while TMDL for DO is under development for Stockton Deep Water Ship Channel.
 - Regional Board response:
 - August 2000: Regional Board management stated, in writing, that the removal of the DO objectives was unintended, and committed to restoring the objectives in the next printing of the Basin Plan. Basin Plan has yet to be re-printed.
 - In April 2001, we came to agreement with RB5 staff on revised language to restore the DO objectives.
 - In May 2002, RB staff decided not to revise the Basin Plan to restore the deleted Delta DO objectives, in favor of waiting until the next year, then proposing amendments to make the Delta DO objectives consistent with EPA's DO criteria guidance.
 - By end of May 2002, RB5 staff indicated they would prefer EPA promulgate because the Delta DO issue was so political for them.
 - RB5's 2002 Triennial Review workplan included DO objectives as a low priority for which no resources were allocated. [CHECK FINAL TRIENNIAL REVIEW WORKPLAN TO CONFIRM]
 - In June 2002, RB5 staff reported internal disagreement regarding whether the saturation-based DO objectives were ever intended to apply to the Delta, and whether the disapproved amendment was an intentional correction or a mistake (the "intentional correction" position is not

supported by the Staff Report for the amendment, nor by the RB's 8/00 letter); however, RB5 staff committed to at least partially resolve the disapproval in 2003 by eliminating the Basin Plan provision that exempts certain Delta waters from the remaining concentration-based objectives.

- Goforth met with RB5 staff July 1, 2003 to discuss Delta DO disapproval resolution. The following plan of action was agreed upon:

- At next triennial review, RB5 staff will propose a basin plan amendment to remove exemption from DO objectives for "special purpose" constructed Delta waters (this would make all Delta waters subject to at least the minimum concentration DO objective; thereby resolving one component of our disapproval; however, next triennial review will not occur until 2005);
- RB5 staff will include site-specific dissolved oxygen objectives in the Deep Water Ship Channel TMDL that will confirm the current objectives of 5 and 6 mg/l for those waters, so any change to Delta DO objectives will undue progress to date on that TMDL.
- RB5 staff will prepare a scope and cost estimate for evaluation of DO conditions and objectives in the entire Delta and provide that information to Region 9; which will assist in seeking funding.
- Status: RB5 staff have not yet provided scope/cost estimate, and have verbally indicated they are reconsidering that commitment, and still prefer EPA promulgation.

If we promulgate, we would probably promulgate 7- and 30-day mean concentration criteria per national criteria guidance, to complement the instantaneous maximum objectives currently in place. Investigation of past DO criteria attainment and studies of existing Delta water quality would likely be needed to ensure promulgated criteria are consistent with antidegradation policy.

Estimated Workload if We Promulgate

Criteria could probably be taken directly from national criteria guidance, which would be fairly straightforward; however, studies of Delta DO -- or comparison of concentration-based and saturation-based criteria -- likely needed to address antidegradation requirements. Awaiting scope/cost estimate for studies from RB5. Based on the experience of other Regions, the basic promulgation process, excluding studies, but including ESA consultation, would likely take approximately 2-3 years.

Estimated Workload if We Do Not Promulgate

If RB decides to propose basin plan amendment to resolve disapproval (at present, this seems highly unlikely), EPA workload will involve review and comment on drafts of proposed amendment, periodic meetings with RB5 staff, ESA consultation, and approval/disapproval of amendment. Excluding studies, entire process would likely take at least 3 years.

If RB does not propose basin plan amendment, and we do not promulgate, we will be

vulnerable to lawsuits for failure to promulgate. Other Regions have recently lost similar lawsuits and are now promulgating. Estimated workload = [_____ years for defense against lawsuit] + [2-3 years for likely promulgation] = _____ years.